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10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT

12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 10 PENSION TRUST FUND FOR OPERATING  
14 ENGINEERS; F.G. CROSTHWAITE and  
15 RUSSELL E. BURNS, as Trustees,

16 Plaintiffs,

17 vs.

18 14 TRACTOR EQUIPMENT SALES, INC., a  
19 California corporation, J.L. WHITE  
INTERNATIONAL, INC., a California  
corporation, TES ASSET MANAGEMENT  
AND CONSULTING GROUP, a California  
joint venture, and DOES 1-20

20 Defendants.

21 Case No.: C 12-01056 JSW

22 **REQUEST TO CONTINUE CASE  
MANAGEMENT CONFERENCE AND  
ALL RELATED DEADLINES;  
[PROPOSED] ORDER THEREON**

23 Date: December 7, 2012

24 Time: 1:30 p.m.

25 Courtroom 11, 19th Floor

26 Judge: The Honorable Jeffrey S. White

27 Plaintiffs herein respectfully request that the Case Management Conference currently on  
28 calendar for December 7, 2012, 1:30 p.m., and all related deadlines, including ADR deadlines, be  
continued for 90 days, to allow Plaintiffs' counsel to conduct a Federal Rules of Bankruptcy  
Procedure §2004 Exam of principal Steven Van Tuyl ordered to take place on December 3, 2012.  
One of the purposes of the 2004 exam is to determine whether Plaintiffs will file a Motion for  
Default as to defendant TES Asset Management and Consulting Group, a California joint venture  
(the nature of the joint venture and its relationship to the debtor is currently unknown) and to  
evaluate whether or not plaintiffs will be amending the complaint to name new defendants whose

1 individual liability will be explored during the 2004 exam.

2       1. Good Cause exists for the request: This action arises under the Employee  
 3 Retirement Income Security Act of 1974 (“ERISA”), as amended by the Multiemployer Pension  
 4 Plan Amendments Act of 1980 (29 U.S.C §§1001-1461 (1982)), to recover withdrawal liability  
 5 amounts owed by Tractor Equipment Sales, Inc. and its controlled group members to plaintiffs  
 6 Pension Trust Fund for Operating Engineers, F.G. Crosthwaite, and Russell E. Burns  
 7 (“Plaintiffs”).

8       2. On March 1, 2012, plaintiffs filed a Complaint in this matter.

9       3. Service was effectuated on defendants Tractor Equipment Sales, Inc., a California  
 10 corporation, J.L. White International, Inc., a California corporation, and TES Asset Management  
 11 and Consulting Group, a California joint venture, by personal service on Jim White, authorized  
 12 agent and/or officer for each defendant on April 9, 2012. A proof of service was filed on April 19,  
 13 2012. (Dkt. # 10)

14       4. Defendant Tractor Equipment Sales, a California corporation, filed a Chapter 7  
 15 Bankruptcy in the U.S. Bankruptcy Court, Northern District of California, on May 14, 2012. On  
 16 June 7, 2012, plaintiffs filed a Notice of Automatic Stay Under 11 U.S.C. Section 362 as to  
 17 defendant Tractor Equipment Sales, Inc. only. (Dkt. #15) Further, plaintiffs’ counsel made an  
 18 appearance at the Meeting of Creditors wherein plaintiffs’ counsel conferred with counsel for  
 19 defendant Tractor Equipment Sales, a California corporation and the Bankruptcy Trustee.  
 20 Plaintiffs’ counsel will be conducting a Federal Rules of Bankruptcy Procedure §2004 Exam of  
 21 principal Steven Van Tuyl on December 3, 2012 to determine whether or not plaintiffs will be  
 22 adding defendants to this instant action and to determine whether plaintiffs may proceed by default  
 23 against defendant TES Asset Management and Consulting Group.

24       5. On May 29, 2012, plaintiffs requested that the Case Management Conference  
 25 scheduled on June 22, 2012, and all of its associated deadlines, be continued for 60 days in  
 26 anticipation of plaintiffs filing a Request for Entry of Default against Defendant and/or amending  
 27 the complaint to add new defendants. (Dkt. 12)

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REQUEST TO CONTINUE CMC; [PROPOSED] ORDER THEREON  
 Case No.: C 12-01056 JSW

1       6. On May 30, 2012, the Motion to Continue Case Management was granted by the  
 2 Court and the Case Management Conference was continued to August 24, 2012 at 1:30 pm. (Dkt.  
 3 #13)

4       7. On June 19, 2012, plaintiffs filed a Notice of Voluntary Dismissal of Defendant  
 5 J.L. White International, Inc. only. (Dkt. 16)

6       8. On July 25, 2012, plaintiffs filed a Request for Default of TES Asset Management  
 7 and Consulting Group, a California joint venture, only. (Dkt. # 17)

8       9. On July 30, 2012, plaintiffs requested that the Case Management Conference  
 9 scheduled on August 24, 2012, and all of its associated deadlines, be continued for 90 days in  
 10 anticipation of plaintiffs filing a Motion for Default as to defendant TES Asset Management and  
 11 Consulting Group, a California joint venture. (Dkt. # 18)

12      10. On August 1, 2012, the Motion to Continue Case Management was granted by the  
 13 Court and the Case Management Conference was continued to December 7, 2012 at 1:30 pm.  
 14 (Dkt. #22).

15      11. Debtors (Defendants to this action) have stalled in providing documents that would  
 16 enable Plaintiffs (Creditors in the bankruptcy action) to evaluate whether it may proceed against  
 17 TES Asset Management and Consulting Group and to determine whether there may be additional  
 18 defendants with liability in this matter.

19      12. Plaintiffs have now sought and received an Order from the bankruptcy court  
 20 granting document production and a 2004 exam to be held on December 3, 2012 (the earliest  
 21 available date for debtor's bankruptcy counsel).

22      13. Since no defendants have appeared in the action, there is no need to hold a Case  
 23 Management Conference or elect an ADR procedure.

24      14. Therefore, plaintiffs respectfully request that the Case Management Conference  
 25 currently scheduled for December 7, 2012, and all of its associated deadlines, be continued for 90  
 26 days in anticipation of Plaintiffs conducting discovery in the bankruptcy proceeding and thereafter  
 27 analyzing the information received in order to determine whether it may proceed with a Motion

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REQUEST TO CONTINUE CMC; [PROPOSED] ORDER THEREON  
 Case No.: C 12-01056 JSW

1 for Default Judgment as to TES Asset Management and Consulting Group and whether it has  
2 grounds for amending its complaint to add additional defendants.

3 I declare under penalty of perjury that I am the attorney for the plaintiffs in the above  
4 entitled action, and that the foregoing is true of my own knowledge.

5 Executed this 7th day of November, 2012, at San Francisco, California.

6 SALTZMAN & JOHNSON LAW CORPORATION

7 By: \_\_\_\_\_ /S/  
8 Julie A. Ostil  
9 Attorneys for Plaintiffs

10

11 **ORDER**

12 IT IS SO ORDERED.

13 Based on the foregoing, and GOOD CAUSE APPEARING, the currently set Case  
14 Management Conference is hereby continued to February 22, 2013 at 1:30 p.m. All related  
15 deadlines, including ADR deadlines, are extended accordingly.

16  
17 Date: November 8, 2012

18   
19 THE HONORABLE JEFFREY S. WHITE  
20 UNITED STATES DISTRICT JUDGE  
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